



RESPONSIVENESS SUMMARY

CITY PARCEL SITE
ENFORCEMENT ORDER No. 2691

Prepared by:

WASHINGTON DEPARTMENT OF ECOLOGY

Eastern Regional Office
4601 N. Monroe Street
Spokane, WA 99205-1295

October 4, 2005

CITY PARCEL SITE RESPONSIVENESS SUMMARY

The Washington Department of Ecology (Ecology) held a 30-day public comment period from August 18 through September 16, 2005 for the Enforcement Order (Order) that requires the past owners and current owner to implement cleanup actions at the City Parcel Site. The purpose of this Responsiveness Summary is to document Ecology's responses to comments sent to Ecology during the public comment period and to propose revisions to the Order to address public comments, if appropriate.

Ecology received the following two letters (listed in the order of receipt by Ecology) during the public comment period:

1. Letter from Robert and Melinda Hays received on August 22, 2005.
2. Letter from Mr. Robert Dunn (Attorney for Mr. Gisselberg, a party to the Enforcement Order) received on September 13, 2005.

Ecology would like to thank all those who provided comments.

As a result of comment 1.b in Mr. Dunn's letter (see attached letter and Ecology's response), statement no. 19 of Section II, Statement of Facts, of the Enforcement Order is being revised in order to present additional facts regarding the 2002 and 2003 groundwater monitoring at the site.

Statement no. 19 of Section II is being revised from:

"Results of the RI confirmed extensive contamination of PCBs in soils in the parking lot and in the alleyway. Additional groundwater sampling was conducted by SAIC in 2003 to verify the 2002 groundwater results. Groundwater results collected in 2002 and additional data collected in 2003 showed no indication of PCB groundwater contamination at the monitoring wells during those sampling events."

to:

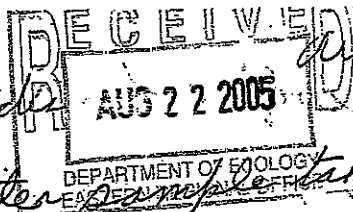
"Results of the RI confirmed extensive contamination of PCBs in soils in the parking lot and in the alleyway. In April 2002, PCBs above the Method A cleanup level were again detected in the monitoring well that was installed in 1997. The presence of the PCBs in groundwater during this sampling event may have been attributable to the nearby soil activities during the investigations that could have disturbed the soil column or influenced the movement of contaminants. PCBs were also detected at very low concentrations from two

other newly-installed wells during the April 2002 sampling. Groundwater sampling events conducted in July 2002, February 2003, and May 2003 did not indicate the measurable presence of PCBs in groundwater in all monitoring wells.”

The Enforcement Order, as revised, is now final. The effective date of the Order is changed from August 16, 2005 to October 4, 2005.

**LETTERS RECEIVED
AND
ECOLOGY'S RESPONSES TO COMMENTS**

Mrs. Johnnie Land



Aug 18TH

1 { A groundwater sample taken in 1999 showed PCB's were above acceptable state levels; However, follow-up sampling has not detected PCB's in groundwater

2 { When has follow-up been done, and if no PCB's are now detected does the removal of building and other details still required.

3 { However, if the PCB contamination still exists, why are there notices put out. This is the second notice we have recieved. The first notice seems more than 30 days ago.

4 { How can property owners decline to conduct work requested by WA.

We live about 8 blocks away from CITY PARCEL SITE. Please force the clean-up and elimination.

5 My wife and I have lung and
throat and nose problems
THROAT
constantly; however Spokane air
is said to be high in pollution.

If City Parcel site has caused
health effects - Eliminate the
site as a start to clean up health
problems.

Thank You

Bob Gays

1019 N. CRESTLINE #8
99202

and

Chelinda Gays

Ecology's Responses to the Letter from Robert and Melinda Hays received on August 22, 1005.

1. A groundwater sample taken in a newly-installed well in 1997 showed PCBs above the level considered acceptable by the state. A subsequent follow up sampling of this same monitoring well in January 1998 did not detect PCBs in groundwater. The presence of the PCBs in this well was attributed to contaminated soils that may have been dragged down or mobilized into groundwater during the well installation.

Ecology conducted investigations at the Site in 2002 and 2003. Groundwater sampling in April 2002 showed PCBs in the 1997 well were again above the level considered acceptable by the state. The presence of PCBs in this well may have been a response to nearby soil activities during the investigations that could have disturbed the soil column or influenced the movement of contaminants. Very low detections of PCBs were found in two other newly-installed wells. PCBs were not detected in groundwater from all monitoring wells in July 2002, February 2003, and May 2003. The periodic detects demonstrate the importance of removing or appropriately isolating contaminated soils at the site.

Another round of groundwater sampling will be conducted after implementation of the cleanup actions.

2. There is extensive soil contamination at the Site. Soil cleanup of the Site requires the removal and off-site disposal of the soils with high PCB concentrations. Other actions include the removal of dry wells, and the removal of drain lines and an underground storage tank containing PCBs inside the building. Building demolition will allow for complete removal of all contaminated soils that are underneath the building. However, Ecology is giving the responsible parties the option to leave the building in place. This option, in addition to the required actions, requires testing and appropriate actions to make sure that PCBs in the floors and walls of the building will be cleaned up, if necessary. Ecology will require financial assurance that will provide cleanup of soils underneath the building when the building is removed or renovated.

3. Ecology has issued several notices in the form of Fact Sheets to inform the public about the progress of the cleanup at this Site. Fact Sheets were mailed to residents who live near the Site. They were also mailed to businesses, community leaders, elected officials and others who may have expressed interest in the cleanup. Legal notices were also posted in the Spokesman Review. These notices are required by the Model Toxics Control Act (MICA), Chapter 70.105D RCW, which is the law that governs cleanup of hazardous waste in Washington state. The following Fact Sheets were issued for the City Parcel Site:

Remedial Investigation/Feasibility Study (RI/FS), October 2001
Project Update, March 2002

Remedial Investigation (RI) Report, January 2003
Draft Feasibility Study (FS) Report, February 2004
Draft Cleanup Action Plan (DCAP) and SEPA DNS, July 2004
Enforcement Order, August 2005

In addition, Ecology made a presentation and, with a representative from the Spokane Regional Health Office, answered questions during a neighborhood meeting on November 15, 2001. Written responses to the community questions raised during this meeting were mailed to interested parties on December 20, 2001.

4. Each of the responsible parties declined to negotiate with Ecology to voluntarily conduct site investigation and cleanup under MICA. Ecology will consider other options that will bring about the cleanup of the Site.

5. The presence of the PCBs at this Site continues to present a threat to human health and the environment. Ecology's goal is to have this Site cleaned up. It is in the best interest of the public to move forward with the cleanup.

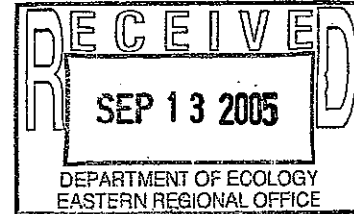
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September 12, 2005



Ms. Teresita Bala
State of Washington DOE
4601 N. Monroe St.
Spokane, WA 99205

**Re: Spokane Transformer
Site - 708 N. Cook**

Dear Ms. Bala:

This is to serve as the response of Mr. Paul Gisselberg regarding DOE's recent Notice of Enforcement Order and as his objection to DOE's Enforcement Order, including the Statement of Facts and Determinations therein.

1.a First, Mr. Gisselberg objects to the recent Notice DOE issued concerning its Enforcement Order. It appears to be intentionally misleading insofar as it states that Mr. Gisselberg "did not respond to Ecology's request to negotiate." That is patently untrue and you and the State's lawyers know it.

1.b Additionally, the Notice indicates that there was a groundwater sample taken in 1997 showing PCBs above acceptable levels. Yet, you know that sample was believed to be contaminated as a result of the drilling process, as borne out by all subsequent testing. Failure to apprise Notice recipients of this fact is intentionally deceiving and misleading. (See Attachment 1, p. 9).

2 Second, DOE by its own malfeasance/misfeasance failed to warn the public, including Mr. Gisselberg, as early as October 19, 1976 that the EPA had requested DOE to initiate appropriate compliance actions on the subject site. Yet, DOE never did so, to the direct detriment of Mr. Gisselberg who several years later purchased the property unaware of the contamination and DOE's negligent response to EPA. (See Attachment 2).

Ms. Teresita Bala
September 12, 2005
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3 Third, DOE on March 13, 1980 allowed the property to be placed on the market despite knowing that the property was contaminated. Yet, DOE did nothing to apprise unsuspecting property purchasers, such as Mr. Gisselberg, of the hazardous waste concerns. This too was malfeasance. (See Attachment 3).

4 Fourth, DOE has arbitrarily and capriciously targeted Mr. Gisselberg in its Enforcement Order as a PLP when in fact, in a final Baseline Report issued on behalf of DOE in March 1990, it was concluded that the primary potential responsible parties were the owners of Spokane Transformer Company – Boyce and Overton (p. 14). Further, the Baseline Report identified seven (7) electric/utility companies that had shipped PCB transformers to the Spokane Transformer site (pp. 15-20). The EPA conclusion was that they should be "investigated to determine the extent of their liability." DOE has at all times arbitrarily and capriciously elected not to do so in contravention of its statutory duties and responsibilities. (See Attachment 4).

5 Fifth, DOE's proposed remedial measures are arbitrary and capricious insofar as it has permitted the adjacent alleyway owners, the City of Spokane, to address its own PCB contamination by installing a "cover over the contaminated soils in the alleyway" and to actually bury PCB contaminated soils below grade and cap them with concrete. This is clearly arbitrary and discriminatory treatment at the expense of Mr. Gisselberg based on the remediation being imposed upon him. (See Attachments 5 and 6).

6 I trust based upon the foregoing, DOE will commence to pursue the previously EPA identified PLPs, and to reissue the Enforcement Order and Notice to fairly and accurately reflect the record in this matter and to amend its Remediation Plan.

Very truly yours,

DUNN & BLACK, P.S.

ROBERT A. DUNN

Enclosures

cc: Paul Gisselberg
Max Etter
Todd Reuter

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